Mayor, 67 N. Y. 21; *Commonwealth* v. *Hawkes*, 128 Mass. 528. A state officer is one who receives his authority under the laws of the state and performs some of the governmental functions of the state. *State ex rel.* v. *Valle*, 41 Mo. 29. *State ex rel.* v. *Bus*, 135 Mo. 325. A justice of the peace in a city constitutes a part of the judicial department of the state government and is a public officer. *People* v. *Ransom*, 88 Cal. 568. The nature of the duties of the officer determines his character as state or municipal. *People* v. *Hurlbut*, 24 Mich. 44; DILLON. MUN. CORP., § 58. We think with Spruance, J., who dissents, that the respondent was intended to be included by the terms of the amendment.

REAL PROPERTY—VENDOR'S LIEN NOTE—EFFECT OF TRANSFER.—A vendee's note was given in payment for land, *Held*, that a transfer of the note carried with it the vendor's lien. *Brandenburg* v. *Norwood* (Tex.), 66 S. W. 587. This follows the English precedent. *Rayne* v. *Baker*, 1 Giff. 241; though contrary to the decided weight of American authority. *Shall* v. *Briscoe*, 18 Ark. 142.

REAL PROPERTY—HOMESTEAD—WIDOW'S RIGHT TO.—A wife voluntarily lives apart from her husband in a different state, *Held*, she is not entitled to the homestead of her deceased husband. *Ullman* v. *Abbott* (Wyo.), 67 Pac. 467.

The authorities, however, are not harmonious. *Brown* v. *Brown*, 68 Mo. 388. But if driven away by the wrong of her husband, her homestead right continues. *Barker* v. *Dayton*, 28 Wis. 367. These same principles have been applied to dower cases. *Stanton* v. *Hitchcock*. 64 Mich. 316; *Sherrid* v. *Southwick*, 43 Mich. 515.

REAL PROPERTY—RIGHT TO IMPROVEMENTS—COLOR OF TITLE.—A deed was given in payment for liquors to be sold in violation of law, *Held*, not to constitute color of title which will entitle the grantee to the value of the improvements placed on the property by him during possession. *Lindt* v. *Uihlein* (Iowa), 89 N. W. Rep. 214.

The illegality of the transaction was the basis of the decision, for a void deed may constitute color of title. *Railway Co.* v. *Alfree*. 64 Ia. 504.

RES JUDICATA—SPECIFIC PERFORMANCE AFTER NOMINAL DAMAGES.—A and B entered into a contract with each other for a lease of telegraph lines. B broke the contract. A prosecuted to judgment for nominal damages at law, and now comes into equity for specific performance. Granted. The court states that a judgment for substantial damages might have acted as a bar. *Slaughter et al.* v. *Compagnie Francaise des Cables Telegraphiques* (Cir. Ct., S. D. N. Y.), 113 Fed. Rep. 1.

It would seem that no case involving the precise question has heretofore arisen. Nearly the converse has been decided. *Putnam* v. *Clark*, 34 N. J. E. 535, where an injunction issued to restrain a party from proceeding at law for the same matter after he had secured a decree in equity. And a question very similar to the one under discussion has been decided, but contrariwise (*Allis* v. *Davidson*), where a judgment at law was successfully set up as a bar to a suit for cancellation of a note and mortgage. And reformation has been refused after judgment at law. *Washburn* v. *Great Western Insurance Co.* 114 Mass. 175; *Metcalf* v. *Gilmore*, 63 N. H. 174; *Steinbach* v. *Insurance Co.* 77 N. Y. 498.

STATUTE OF LIMITATIONS—AMENDMENT OF DECLARATION—NEW CAUSE OF ACTION.—An action was begun on a contract to recover damages for breach thereof in failing to leave to plaintiff by will a child's portion, promised in consideration of plaintiff's rendering personal services. This action was defeated because the contract was oral and came within the Statute of Frauds. An amendment was made so as to declare on a quantum meruit, and the plea of limitations was interposed. *Held*, that the amendment added a new cause of action and that, as the period of limitations had elapsed before the amendment was made, the action could not be maintained and the plea of limitations was properly interposed, *Hamilton* v. *Thirston* (Md. 1902), 51 Atl. Rep. 42. A similar conclusion was reached in the case of *Lambert* v. *McKenzie* (Cal. 1901), 67 Pac. Rep. 6, where the complaint was so amended as to declare upon the negligence of the defendant.

This is the rule well established by the decisions generally. Where the amendment adds a new or different cause of action, the amendment is tantamount to the commencement of a new action and does not relate back to the time of filing the original declaration or complaint. Under such circumstances the statute of limitations may be pleaded. *State* v. *Green*, 4 Gill & J. (Md.) 381; *Harriott* v. *Wells*, 9 Bosw. (N. Y.) 631.

SALES—ENTIRE CONTRACT—RESCISSION.—Sale of 300 tons of iron, "cash payable on receipt of each 100 tons." Refusal by vendee to pay for first 100 tons until enough more should be

delivered to satisfy vendee that contract would be performed. *Held:* vendee's default, accompanied with announcement of intention not to perform upon agreed terms, gave vendor right to rescind. *Johnson Forge Co.* v. *Leonard*, (Del.) 51 Atl. Rep., 305.

The test prescribed by this case for determining whether the right of rescission exists appears to be somewhat unusual. It is stated that if a default by one party is accompanied with an announcement of intention not to perform upon the agreed terms, or is accompanied with a deliberate demand "insisting upon new terms different from the original agreement," the other party may rescind. A majority of the cases seem to warrant rescission upon a default in payment, even where no such intention is expressed or to be gathered from the conduct of the party in default, and upon other and quite different grounds. *Kokomo Strawboard Co.* v. *Inman*, 134 N. Y. 92, 31 N. E. Rep. 248; *Hess Co.* v. *Dawson*, 149 Ill. 188, 36 N. E. Rep. 557. *McGrath* v. *Gegner*, 77 Md. 331, 26 Atl. 502, 39 Am. St. Rep. 415. A few courts, however, in accord with the English rule as stated in *Iron Co.* v. *Naylor*, 9 App. Cases, 434, hold that such a default does not justify rescission unless the acts or conduct of the defaulting party evince an intention no longer to be bound by the contract; (see *Withers* v. *Reynolds* 2 B. & Ad. 882) and the principal case is rather in harmony with those decisions. *Blackburn* v. *OReilly*, 47 N. J. L. 290, 34 Am. Rep. 159; *Myer* v. *Wheeler*, 65 Iowa 390, 21 N. W. 692; *West* v. *Bechtel*, 105 Mich. 204, 84 N. W. 69; *Cycle Co.* v. *Wheel Co*, 105 Fed. 325; *Cherry Valley Iron Works* v. *Iron River Co.*, 12 C. C. A. 306, 64 Fed. 659. (See MECHEM ON SALES, §§ 1140-1148.) The rule seems just and reasonable, and well calculated to protect the interests of both parties to the contract.

TRUSTS—USE OF TRUST FUNDS BY PARENT—REPAYMENT TO FUND—FRAUD ON CREDITORS.—A debtor, acting as trustee under his father's will for his own minor children, supported them out of the trust funds. *Held*, that whether the will be construed as clothing trustee with discretionary power as to the support of the children, or as creating an express trust for that purpose, the debtor is not permitted to restore to the trust estate the sums so expended on the plea that he is able and it is his personal duty to support his children, when by so doing he will evade the payment of his honest debts. *Nat'l Valley Bank* v. *Hancock* (Va.) 40 S. E. Rep. 611.

A father, if of ability, is bound to maintain his infant children, even though they may have property of their own. *Evans* v. *Pearce*, 15 Grat. (Va.) 513; 7 Richardson's Eq. (S. C.) 105; and this, ordinarily, though there is a provision in the trust instrument for their maintenance, *Mundy* v. *Howe*, 4 Br. Ch. 224; PERRY ON TRUSTS, § 612; unless the property is conveyed upon an express trust, one of the conditions of which is such maintenance, when it must be so applied irrespective of the father's ability to support. *Ransome* v. *Burgess*, L. R. 3 Eq. 773. When, however, trustees have discretion as to the application of the trust fund to the support of infant children, the father cannot compel its exercise in his favor, nor will the court interfere if they have exercised their discretion. *Brophy* v. *Bellamy*, 8 Ch. App. 798. It seems that the tendency now is to look to the circumstances of each case, and authorize the income from estates of infants to be applied to their support whenever it appears to be proper. *Andrews* v. *Partington*, 3 Br. Ch. 60, note; *Evans* v. *Pearce*, *supra*. The principal case held that the fund had been rightfully appropriated, and so could not be restored to evade payment of his honest debts by the debtor.

WILLS—REVOCATION BY MUTILATION BY VERMIN.—The statute of North Carolina provides that "no will or testament in writing, or any clause thereof, shall be revocable otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing, or obliterating the same, by the testator himself, or in his presence and by his direction and consent." The testator executed a will and placed it in a wooden safe where it was mutilated by vermin. The evidence showed that he knew of this mutilation, and declared to various persons that he had revoked the will. *Held*, there is a revocation of a will where it is defaced and mutilated by vermin, and the testator adopts this with intent to revoke the will. *Cutler* v. *Cutler* (N. Car.), 40 S E. Rep. 689.

Similar provisions in the statutes of other states have always been strictly construed and no revocation has been held to have taken place unless the strict requirements as to burning, tearing, cancelling or obliterating have been met. The intent alone does not effect a revocation, unless there has been some act of destruction as prescribed by the statute. AM. & ENG. ENC. OF LAW, WILLS; JARMAN ON WILLS, p. 147. n. This case goes further in a liberal interpretation of the statute than any which has been decided. The evidence showed conclusively that the mutilation was due to vermin. In no sense, conse-